

LABOUR DEPARTMENT

The 27th May, 1985

No. 9/5/84-6Lab./4170A.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of M/s Haryana Roadways, Kaithal (Haryana).

IN THE COURT OF SHRI V. P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT,
AMBALA AT AMBALA CITY (HARYANA)

Reference No. 185 of 1984

Old No. 151 of 1982

SHRI JOGINDER LAL, WORKMAN AND THE MANAGEMENT OF M/S HARYANA ROADWAYS, KAITHAL (HARYANA)

Present.—Shri U. Kant, for applicant workman.

Shri A. R. Goyal, for respondent.

AWARD

The Governor of Haryana in exercise of the powers conferred,—vide clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following disputes to the Presiding Officer, Labour Court, Faridabad between Shri Joginder Lal, workman and the management of Haryana Roadways, Kaithal. The terms of the reference are as under :—

Whether the termination of services of Shri Joginder Lal, workman was justified and in order ? If not to what relief is he entitled to ?

This dispute was originally referred to the Labour Court, Faridabad. In April, 1984 Labour Court, at Ambala was constituted, so this reference was received by transfer. Notices were issued to the parties. They appeared and contested the dispute. Shri Joginder Lal, workman alleged that he join services of respondent on 7th August, 1971 as a Conductor. His services were terminated on 23rd January, 1979 in contravention of section 25 (F) of the Industrial Disputes Act, 1947. He also alleged that he proceeded on four days rest thereafter he fell ill and had been despatching Medical Certificate continuously more than six months. During that period no notice was received by him. No charge-sheet was served upon him. No Inquiry Officer was appointed. No show-cause notice coupled with charges was intimated to him. Nor he was given any opportunity of being heard. His services were terminated arbitrarily.

On the other hand, respondent alleged that Shri Joginder Lal, workman absented on 10th September, 1976 thereafter his services were terminated,—vide order copy of the same is Ex. M-I. Before passing the final order of termination workman was served through telegram on 14th September, 1976 when he did not turn up charge-sheet was despatched to him. Workman neither filed reply of the charge-sheet nor reported on duty. Workman had been despatching applications for leave which were rejected. Workman was again informed telegraphically that Assistant Accounts Officer has been appointed as Inquiry Officer. Later summoned the workman twice or thrice under registered covers but workman did not appear before the Inquiry Officer. Notice copy of the same Ex. MW 9 was pasted at the door of the workman in spite of that he did not turn up and reported on duty. Show cause notice was also served upon him but all in vain. Workman remained absent though which lead to termination of his services.

On the pleadings of the parties the following issues were framed for the just decision of the controversy between the parties :—

Issue No. 1

Whether the termination of services of Shri Joginder Lal, workman was justified and in order ? If not, what relief is he entitled to ?

Respondant management in support of his case examined Shri Satya Parkash, Clerk as MW I. He deposed on oath that workman Joginder Lal was employed as a Conductor. He proceeded on 4 days rest thereafter he absented from duty. He had been despatching his leave applications on the pretext of illness but no medical certificate was despatched by him. His applications were rejected. He was telegraphically informed to appeal and report on duty, but he failed to do so ultimately an Inquiry Officer was also appointed. Who also summoned the workman through all legitimate process of service, but workman did not bother to appear.

Shri Joginder Lal, workman appeared as WW-I. He stated that no charge-sheet was served upon him. No enquiry was conducted. He was illegally terminated. In cross-examination he stated that he remained ill for 5 and 6 months. He had been despatching his medical leave applications from his village. He got his treatment in his village, where there is no Government dispensary or hospital. His services were terminated from 10th September, 1976 on 9th October, 1979 illegally.

In view of the above evidence I am of the considered view that Shri Joginder Lal proceeded on 4 days rest thereafter he had been despatching his medical leave continuously for 4, 5 or 6 months. He did not produce himself before the nearest Medical Officer in a Government dispensary or hospital, and failed to get recommended his medical application.

The onus to establish that Shri Joginder Lal was ill was upon the workman himself. He should have been examined the medical practitioner under whom he got treatment but no such steps was taken by him in his defence.

It is not believable that the telegrammes, regis ? publications in local papers. His service by pasting a notice at his door cannot be incorrect. Action of the department regarding the termination of services of workman Joginder Lal is according to law, because Joginder Lal wilfully absented from duty and did not bother to appear even on a single day during the period of his six months absence. It shows that conduct of Shri Joginder Lal is not at all above board had he would have been ill he must have despatched some family members with the application but he failed to do so, nor he got himself medically examined who could plead his cause. So I think that the order of termination regarding the services of Joginder Lal, workman is justified. This issue is decided, in favour of management and against the workman.

In view of my findings on issue No. 1 above I pass my award accordingly.

Dated 20th March, 1985.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endorsement No. 1094, dated Ambala City, the 30th April, 1985.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

No. 9/5/84-6 Lab/4170 B—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of M/s. Haryana Roadways, Kaithal (Haryana).

IN THE COURT OF SHRI V. P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA
AT AMBALA CITY (HARYANA)

Reference No. 187 of 1984
(Old No. 149 of 1982)

SHRI DEWAN CHAND, WORKMAN AND THE MANAGEMENT OF MESSRS HARYANA ROADWAYS,
KAITHAL (HARYANA)

Present.—Shri U. Kant, for workman.

Shri A. R. Goyal, for respondent.

AWARD

The Hon'ble Governor of Haryana in exercise of the powers conferred,—vide clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 referred the following disputes to the Presiding Officer, Labour Court, Faridabad between Shri Dewan Chand, workman and the management of Messrs Haryana Roadways, Kaithal. The terms of the reference are as under :—

Whether the termination of services of Shri Dewan Chand, workman was justified and in order? If not to what relief is he entitled to ?

The dispute between Shri Dewan Chand, workman and the Haryana Roadways was originally referred to the Labour Court, Faridabad for adjudication. On creation of new Labour Court, at Ambala this reference was received by transfer.

Workman Dewan Chand alleged that he joined as a Car Driver in the service of respondent on 24th March, 1977 and thereafter one month notice was served upon him regarding the termination of the services of the workman. On the expiry of period of notice his services were terminated without holding any proper enquiry and also without affording any opportunity of being heard. Workman further alleged that termination order is *mala fide*. His case is covered under the service rules as well as article 311 (2) is also attracted but in violation of Civil Servant Rules, he was terminated. Workman has prayed for reinstatement and benefit of continuity of service with full back wages.

Respondant has contested the case and contended that workman did not exhaust departmental remedy. He should have filed appeal against the orders of the General Manager, to the State Transport Commissioner, Haryana but it was not done. Respondant No. 2 properly issued one month notice as well as show cause notice and after compliance the complete procedure the services of workman was terminated. It was also contended that workman habitual absentee without getting the leave sanctioned. He was unfit to be retained in service. There was no need of holding regular enquiry, because workman even failed to submit his medical certificate with his leave application.

On the pleadings of both the parties the following issues were framed :—

Whether the termination of service of Shri Dewan Chand, workman was justified and in order ? If not, to what relief is he entitled ?

I have heard Shri U. Kant for workman and Shri A.R. Goyal, for respondent and have perused the oral and documentary evidence placed on the file. My issue wise findings are as under :

Issue No. 1

Respondant examined Shri Khushi Ram, Clerk who deposed that workman Dewan Chand remained absent without getting his leave sanctioned from 9th June, 1979 to 12th June, 1979 even prior to that he remained absent from 13th December, 1977 to 21st December, 1977, 30th April, 1978, to 13th May, 1978, 8th March, 1979 to 27th March, 1979. These absence were ordered as leave without pay. All these absence were without prior getting the leave sanctioned. Thereafter one month notice, copy of the same is Ex. M-1 was issued to workman. Show-cause notice-EX-M-2 was also issued to workman. Uptil the expiry of period of notice no reply of workman was received which resulted into termination of services of workman. This termination was challenged by workman in Civil Court at Kurukshetra where his suit was dismissed on the ground that the Civil Court has got no jurisdiction to try the labour dispute and Labour Court has got the jurisdiction to dispose of the dispute.

Workman appeared as WW-I, he denied his absence for the period 13th December, 1977 to 21st December, 1977, 30th April, 1978 to 13th May, 1978 and 8th March, 1979 to 27th March, 1979. He also stated that for remaining on leave prior to getting sanctioned leave for the period from 9th June, 1979 to 12th June, 1979. He despatched medical certificate and that was not accepted. He admitted that one month notice was received by him. Show-cause notice was received by him.

In view of the above evidence I am of the opinion that the sole plea of the authorised representative of workman that punishment is excessive is not tenable because the conduct of workman in performance of his official duty is most undesirable. He is a habitual absentee. He has been absenting from his duty without prior getting his leave sanctioned. The charges against him that he remained absent from 9th June, 1979 to 12th June, 1979 is not supported by medical certificate if the claim of the workman would have truthful, he must have been examined the medical officer from whom he got his treatment as well as medical certificate was obtained, so it is clear that the best piece of evidence has been withheld and on adverse inference has to be drawn against the workman. The respondent have properly acted in issuing one month notice as well as show-cause notice. It is not clear from the file whether the retrenchment compensation was awarded to him or not because WW-I has denied his knowledge. Whether it has been paid or not while workman has not claimed in his statement when he appeared in witness-box.

In view of my above discussions I am of the opinion that there is no violation of section 25 (F) of the Industrial Disputes Act, 1947. Moreover the Civil Servant Rules and Articles 311 (2) are not attracted in the dispute in hand.

If retrenchment Compensation is not paid in those circumstances the workman is entitled to get it. This issue is decided in favour of management and against the workman. I pass my award accordingly.

Dated : 20th March, 1985

V.P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endorsement No. 1093, dated Ambala City, the 30th April, 1985.

Forwarded (Four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V.P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

No. 9/5/84-Lab/4171.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of M/s Harkalyan Binders and Printers, Panchkula (Ambala).

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA AT AMBALA CITY.

Reference No. 235 of 1984
(Old) 26 of 1982

SHRI BALBIR SINGH, WORKMAN AND THE MANAGEMENT OF MESSRS HARKALYAN BINDERS AND PRINTERS, PANCHKULA (AMBALA).

Present :—

Shri Ajit Singh for workman.

None for respondent.

AWARD

The Hon'ble Governor of Haryana in exercise of the powers conferred,—vide clause (c) of the subsection (i) of section 10 of the Industrial Disputes Act, 1947, referred the following disputes to the Presiding Officer, Labour Court, Faridabad between Shri Balbir Singh, workman and the management of Messrs Harkalyan Binders & Printers, Panchkula (Ambala). The terms of reference are as under :—

“Whether the termination of services of Shri Balbir Singh, workman was justified and in order? If not, to what relief is he entitled to?”

Dispute between Balbir Singh and the management of Messrs Harkalyan Binders & Printers, Panchkula was originally referred to the Presiding Officer, Labour Court, Faridabad for adjudication; one constitution Labour Court at Ambala this reference was received by transfer.

Notices were issued to both the parties. Workman appeared but respondent absented in spite of service proceeded *ex parte*.

It would be worthy to mention here that both the parties had appeared before the Labour Court, Faridabad. They have contested the case. They adduced their evidence on the merits of this case.

The workman alleged that he joined the services of respondent management on 18th January, 1976. His services were first of all terminated illegally on 13th April, 1978. Labour Court, Rohtak gave award in his favour so he was taken in service w.e.f. 22nd October, 1979. Respondent again terminated services of workman on 2nd July, 1980 in contravention of section 25(F) of Industrial Disputes Act, 1947, so workman again prayed for re-instatement with continuity in service with full back wages.

Respondent management contested the case contending that Balbir Singh had been working on daily wages since August, 1976 with respondent management. He remained absent from 9th April, 1978 to 21st May, 1978. So his services were discontinued. The matter arose before the Labour Court, Rohtak where parties arrived at mutual agreement. Workman was taken in service, but when there was no work with the management his services was again terminated. Since workman was employed on daily wages basis on Deputy Commissioner's rates question of serving notice, charge-sheet etc. did not arise. Moreover he had not completed services of 240 days.

Workman filed replication controverted the allegations of the respondent. It was also alleged that there was work with the management. Had they would have no work with the management so it would have taken decision in this regards, but no such decision was taken, because there was work with the management nor any such decision or copy of any decision was placed on the file.

On the pleadings of the parties the following issues were framed:

Issue No. I

Whether the termination of services of Shri Balbir Singh, workman is proper justified and in order? if not, to what relief is he entitled to ?

Issue No. II

Relief:

I have heard Shri Ajit Singh Bagri authorised representative of workman and none for respondent management because none appeared to contest this case on behalf of the respondent management, but I have gone through the evidence of the parties available on the file my issue-wise findings are as under:—

Issue No. I

In support of this issue management examined Shri Gulshan Sharma Supervisor who stated that workman was employed on daily wages on 22-10-1979 and was removed on 2-7-1981. He also served the department prior to 22-10-1979. He further stated if there is a work with the management the daily wages are employed when there is no work with the management in these circumstances such person are liable to be terminated. He stated that last year management had worked of 15/20 lacs then of 1½ lacs. Workman Balbir Singh was not summoned to work another 10 or 12 person were employed.

Shri Balbir Singh workman appeared in witness box and made statement on solemnly affirmation, saying that he joined service of respondent on 10-1-76 as Printing Machine Helper. He used to get Rs. 225 p.m. at the time of termination of his services. Once he fell ill took leave for 10 days but the management terminated his services on 13-4-78 without serving any charge-sheet or conducting any enquiry. He filed a case which was compromised in the Labour Court, Rohtak. Thereafter he was again terminated on 2-7-80 and after his termination near about 20 or 25 persons were employed. Due to his illness he could not appear to attend his work. He remained admitted in Medical College, Rohtak and despatch his leave telegraphically under the instructions of the Court he is in service since 13-7-1982.

In view of above evidence it is evident that on 2-7-80 workman Balbir Singh was again terminated. MW.I deposed that after the termination of the services of workman Balbir Singh 20 or 25 persons were employed on the availability of work but Balbir Singh was never informed or invited to work.

Workman Balbir Singh has been serving the respondent since 1976 upto 2nd termination of workman i.e. 2-7-80 so he had completed service more than 240 days thereafter if management wanted to terminate services of Shri Balbir Singh workman it should have been issued notice to him, pay in lieu of notice period should have been given to him and should also been paid retrenchment compensation. Moreover the appointing authority should have also been informed about it but no such procedure was adopted, so the termination of services of Shri Balbir Singh, workman was unjustified and illegal. He was taken again in service on 13-7-82. Shri Balbir Singh, workman has been serving with management since then, so he is entitled to the relief from 2-7-80 upto 13-7-82 towards continuity in service, full wages of the disputed period, and all other benefits to which he would have been entitled to while in service, so this issue is decided in favour of Shri Balbir Singh, workman against the management.

Issue No. II

For the fore-going reasons on the basis of my findings on issue No. I I pass my award regarding the controversy in hand regarding the disputed period accordingly.

Dated 20th March, 1985

V.P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endst. No. 1095, dated 30th April, 1985.

Forwarded (four Copies) to the Financial Commissioner & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.